

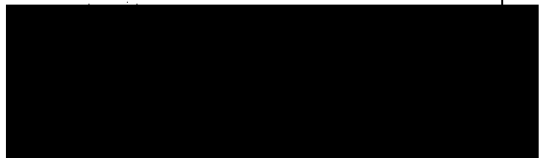


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



FILE: [REDACTED] Office: Vermont Service Center

Date:

AUG 14 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of the Foreign Residence Requirement  
under § 212(e) of the Immigration and Nationality Act, 8 U.S.C.  
1182(e)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained, and the matter will be remanded to the director to request a § 212(e) waiver recommendation from the United States Information Agency (USIA).

The applicant is a native and citizen of Bangladesh who is subject to the two-year foreign residence requirement of § 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(e), because he participated in a program which was funded by a United States government agency. The applicant last entered the United States as a nonimmigrant exchange visitor on May 28, 1999. The applicant seeks the above waiver of the two-year foreign residence requirement because he cannot return to the country of his nationality because he would be subject to persecution on account of race, religion, or political opinion.

The director reviewed the documentation submitted and determined the record failed to establish the applicant would be subject to persecution as indicated.

On appeal, the applicant submits additional evidence, including a newspaper report dated April 29, 2000, which indicates that the applicant's wife, who is residing in Bangladesh, had been attacked on two occasions by fundamentalist terrorists. The article states that her husband, a renowned foreign resident social worker, had been compelled to leave Bangladesh due to his fear of the terrorists and this act has caused his wife and other members of his family to be attacked. The applicant also submitted other reports relating to the plight of women in Bangladesh and who are the focal point of his cause.

Section 212(e) of the Act provides, in pertinent part, that: No person admitted under § 101(a)(15)(J) of the Act, 8 U.S.C. 1101(a)(15)(J), or acquires such status after admission,

(i) whose participation in a program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, or

(ii) who at the time of admission or acquisition of status under § 101(a)(15)(J) of the Act was a national or resident of a country which the Director of the United States Information Agency (USIA) pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or

(iii) who came to the United States or acquired such status in order to receive graduate medical education or training,

shall be eligible to apply for an immigrant visa or for permanent residence, or for a nonimmigrant visa under §§ 101(a)(15)(H) or 101(a)(15)(L), until it is established that such person has resided in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States.

To be eligible for a waiver under § 212(e) of the Act, the applicant must establish that he would be subject to persecution on account of race, religion, or political opinion. A clear reading of the statute reveals that this standard is different from and more restrictive than the eligibility requirements for asylum under § 208 of the Act, 8 U.S.C. 1158, where an applicant must establish that he or she is unwilling to avail himself or herself of the protection of his or her country on account of race, religion, nationality, membership in a particular social group or political party. The statutory language differs between § 212(e) and § 208. In an asylum case the applicant must show a credible fear of persecution.

The Board in Matter of Acosta, 19 I&N Dec. 211 (BIA 1985), determined that the previously defined "well-founded fear" standard for asylum (now credible fear of persecution) and the "clear probability standard" for withholding of deportation under former § 243(h) of the Act, 8 U.S.C. 1253(h), now referred to as "restriction on removal" under § 241(b)(3)(a) of the Act, are not meaningfully different and, in practical application, converge. The cognizable types of persecution are also narrower in § 212(e) cases (three), whereas asylum cases include two additional types, membership in a social group and nationality. It is concluded for purposes of analysis that the present standard for asylum (a credible fear of persecution) and the present standard for restriction on removal (a clear probability of persecution) are more generous in scope than the standard for this application (would be subject to persecution). Matter of Acosta, by extension.

The requirements of § 212(e) are also more restrictive than the eligibility requirements for restriction on removal under § 241(b)(3)(A) of the Act, where an applicant must establish that his or her life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion.

The record contains sufficient documentation to establish the applicant's eligibility even under the less restrictive standards set forth in Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987). The record contains evidence that either the applicant or his immediate family, due to his dedication towards establishing women's rights

in Bangladesh, had been physically attacked, or threatened, or constantly intimidated while living in Bangladesh. The record contains substantive evidence that the applicant has fear of persecution, should he return to Bangladesh, because of his own past experiences. When considered in its totality, the record now establishes the applicant's eligibility for the benefit sought.

In this proceeding, it is the applicant alone who bears the full burden of proving his or her eligibility. Matter of T--S--Y--, 7 I&N Dec. 582 (BIA 1957), and Matter of Y--, 7 I&N Dec. 697 (BIA 1958). In this case, the burden of proof has now been met.

It must be noted that a waiver under § 212(e) of the Act may not be approved without the favorable recommendation of the USIA. Accordingly, this matter will be remanded to the director to file a Request For USIA Recommendation Section 212(e) Waiver (Form I-613) together with the waiver application in this case (Form I-612). If the USIA recommends that the application be approved, the application must be approved. On the other hand, if the USIA recommends that the application not be approved, then the application must be re-denied without appeal.

**ORDER:** The appeal is sustained. The director's decision is withdrawn. The record of proceeding is remanded to the director for action consistent with the foregoing.